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**Board of Vocational Nursing
and Psychiatric Technicians**

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**BEFORE THE
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. VN-2010-2295

**MASAKI TSURU
390 Tamalpais Ave.
Mill Valley, CA 94941**

ACCUSATION

Vocational Nurse License No. VN 220329

Respondent.

Complainant alleges:

PARTIES

1. Teresa Bello-Jones, J.D., M.S.N., R.N. ("Complainant") brings this Accusation solely in her official capacity as the Executive Officer of the Board of Vocational Nursing and Psychiatric Technicians, Department of Consumer Affairs.

2. On or about April 26, 2006, the Board of Vocational Nursing and Psychiatric Technicians issued Vocational Nurse License Number VN 220329 to Masaki Tsuru ("Respondent"). The Vocational Nurse License was in full force and effect at all times relevant to the charges brought herein and will expire on August 31, 2013, unless renewed.

JURISDICTION

3. This Accusation is brought before the Board of Vocational Nursing and Psychiatric Technicians ("Board"), Department of Consumer Affairs, under the authority of the following

1 laws. All section references are to the Business and Professions Code unless otherwise indicated.

2 4. Section 2875 of the Business and Professions Code ("Code") provides, in pertinent
3 part, that the Board of Vocational Nursing and Psychiatric Technicians ("Board") may discipline
4 the holder of a vocational nurse license for any reason provided in Article 3 (commencing with
5 section 2875) of the Vocational Nursing Practice Act.

6 5. Section 118, subdivision (b), of the Code provides that the
7 suspension/expiration/surrender/cancellation of a license shall not deprive the Board of
8 jurisdiction to proceed with a disciplinary action during the period within which the license may
9 be renewed, restored, reissued or reinstated.

10 STATUTORY AND REGULATORY PROVISIONS

11 6. Section 2878 of the Code states:

12 "The Board may suspend or revoke a license issued under this chapter [the Vocational
13 Nursing Practice Act (Bus. & Prof. Code, 2840, et seq.)] for any of the following:

14 "(a) Unprofessional conduct, which includes, but is not limited to, the following:

15 ...

16 (4) The use of excessive force upon or the mistreatment or abuse of any patient. For the
17 purposes of this paragraph, 'excessive force' means force clearly in excess of that which would
18 normally be applied in similar clinical circumstances.

19 ...

20 "(d) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
21 violating of, or conspiring to violate any provision or term of this chapter.

22 ...

23 7. California Code of Regulations, title 16, section 2518.6 states, in pertinent part:

24 "(a) A licensed vocational nurse shall safeguard patients'/clients' health and safety by
25 actions that include but are not limited to the following:

26 ...

27 "(b) A licensed vocational nurse shall adhere to standards of the profession and shall
28 incorporate ethical and behavioral standards of professional practice which include but are not

1 limited to the following:

2 “(1) Maintaining current knowledge and skills for safe and competent practice;

3 ...

4 “(c) A violation of this section constitutes unprofessional conduct for purposes of
5 initiating disciplinary action.”

6 8. California Code of Regulations, title 16, section 2521 states in pertinent part:

7 “For the purpose of denial, suspension, or revocation of a license pursuant to Division 1.5
8 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be
9 considered to be substantially related to the qualifications, functions or duties of a licensed
10 vocational nurse if to a substantial degree it evidences present or potential unfitness of a licensed
11 vocational nurse to perform the functions authorized by his license in a manner consistent with
12 the public health, safety, or welfare.”

13 COST RECOVERY

14 9. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
15 administrative law judge to direct a licensee found to have committed a violation or violations of
16 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
17 enforcement of the case, with failure of the licensee to comply subjecting the license to not being
18 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
19 included in a stipulated settlement.

20 STATEMENT OF FACTS

21 10. At all relevant times Respondent was employed at Laguna Honda Hospital &
22 Rehabilitation Center, (“LHH”) San Francisco, California. Respondent’s employment was
23 predicated on his complying with the Abuse Prevention Program at LHH, which in relevant part
24 prohibited the physical and/or verbal abuse of facility residents.

25 11. On or about November 14, 2010, Respondent cared for Resident R.S. (“R.S.”), a
26 90 year-old female who had been diagnosed with dementia and anxiety, and who was severely
27 hard of hearing. R.S. was however, oriented, verbally responsive and able to communicate her
28 needs to staff.

12. R.S. was heard screaming while Respondent was attempting to change her adult pullup. Charge Nurse Hester ("Hester") observed Respondent punch R.S. in her upper right thigh with his fist closed. R.S. screamed after being hit. Hester attempted to get Respondent's attention by banging on the window in the nurse's station, which was adjacent to R.S.'s room. Unable to get his attention, Hester ran out of the nursing station when she observed that Respondent had again raised his right arm.

13. Hester directed Respondent to leave R.S.'s room. She observed a red mark on R.S.'s right thigh. R.S. related that "he hit me hard once and it is sore," while she pointed to her right thigh.

14. Nursing Supervisor Davary interviewed R.S. shortly after the incident. R.S. in reference to Respondent stated “please get him out of here” and told Davary that “he hit me and it hurt.” Davary observed redness on R.S.’s right thigh.

15. On or about December 28, 2010, Respondent resigned from his position at LHH in lieu of termination. His resignation was accepted with the caveat that his services were deemed unsatisfactory with future restrictions on his employment with the City and County of San Francisco.

16. A criminal complaint was filed against Respondent on October 17, 2011, in the case of *The People of the State of California v. Masaki Tsuru*, San Francisco Superior Court, Case No. 11027547, for misdemeanor violations of Penal Code section 368(c) [Elder Abuse] and 242 [Battery], as related to the incident involving resident R.S. Respondent was placed in a pre-trial diversion program, which was successfully completed on March 21, 2012.

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Excessive Force/ Mistreatment)

17. Respondent is subject to disciplinary action under Code section 2878, subdivisions (a)(4) and (d), in that he used excessive force and/or mistreated R.S. The facts in support of this cause for discipline are set forth above in paragraphs 10 through 14.

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1 SECOND CAUSE FOR DISCIPLINE

2 (Unprofessional Conduct – Failure to Safeguard R.S.’s Health and Safety)

3 18. Respondent is subject to disciplinary action under California Code of Regulations,
4 title 16, section 2518.6, subdivision (a), in that he failed to safeguard R.S.’s health and safety.
5 The facts in support of this cause for discipline are set forth above in paragraphs 10 through 14.

6 THIRD CAUSE FOR DISCIPLINE

7 (Unprofessional Conduct – Failure to Incorporate Ethical and Behavioral
8 Standards of Practice)

9 19. Respondent is subject to disciplinary action under California Code of Regulations,
10 title 16, section 2518.6, subdivision (b), in that he failed to incorporate ethical and behavioral
11 standards of professional practice in his care of R.S. The facts in support of this cause for
12 discipline are set forth above in paragraphs 10 through 14.

13 FOURTH CAUSE FOR DISCIPLINE

14 (Violation of LHH Protocols Regarding Patient Abuse)

15 20. Respondent is subject to disciplinary action for violation of Laguna Honda Hospital’s
16 Abuse Prevention Policy by hitting R.S. on her right thigh on November 14, 2010, as set forth
17 above in paragraphs 10 through 14.

18 PRAYER

19 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
20 and that following the hearing, the Board of Vocational Nursing and Psychiatric Technicians
21 issue a decision:

22 1. Revoking or suspending Vocational Nurse License Number VN 220329, issued to
23 Masaki Tsuru

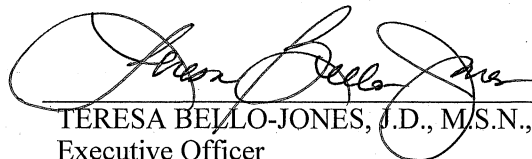
24 2. Ordering Masaki Tsuru to pay the Board of Vocational Nursing and Psychiatric
25 Technicians the reasonable costs of the investigation and enforcement of this case, pursuant to
26 Business and Professions Code section 125.3;

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3. Taking such other and further action as deemed necessary and proper.

DATED: January 16, 2013



TERESA BEJLO-JONES, J.D., M.S.N., R.N.
Executive Officer
Board of Vocational Nursing and Psychiatric Technicians
Department of Consumer Affairs
State of California
Complainant

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